



February 20, 2009

HOUSE BILL No. 1230

DIGEST OF HB 1230 (Updated February 18, 2009 5:57 pm - DI 117)

Citations Affected: IC 5-3; IC 6-1.1; IC 32-29; IC 36-2; IC 36-4.

Synopsis: Publication of notices. Provides that a notice published in a newspaper must also be posted on the newspaper's Internet web site. Eliminates the requirement that a city publish the ordinance setting the salaries of elected city officers. Requires all political subdivisions with a budget of at least \$300,000 and the power to levy a tax to publish an annual report (if not required under any other statute to publish an annual report). Allows the officers of a political subdivision publishing notice to publish in only one newspaper in the political subdivision (instead of two newspapers), if only one newspaper is published in the political subdivision. Allows a newspaper or qualified publication to increase the basic publication charges that were in effect during the previous year by an amount equal to the lesser of: (1) the average of the annual percentage change in the consumer price index for the preceding two years; or (2) the maximum annual percentage increase in the spending of political subdivisions for the year under any spending cap limit enacted into law. Requires public notice advertisements to be in at least 7 point type. Requires a sheriff to publish notice of a mortgage foreclosure sale in at least two newspapers (instead of one newspaper) in each county where the real estate is located, unless only one newspaper is published in a county. Eliminates the requirement that counties publish claims (except for court allowances) before payment. (Current law does not require municipalities to follow this procedure.) Makes conforming amendments.

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Effective: July 1, 2009.

Hinkle, Moses, Clements

January 12, 2009, read first time and referred to Committee on Local Government.
February 19, 2009, amended, reported — Do Pass.

HB 1230—LS 7076/DI 87+



February 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1230

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-3-1-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The cost of all public notice
3 advertising which any elected or appointed public official or
4 governmental agency is required by law to have published, or orders
5 published, for which the compensation to the newspapers or qualified
6 publications publishing such advertising is drawn from and is the
7 ultimate obligation of the public treasury of the governmental unit
8 concerned with the advertising shall be charged to and collected from
9 the proper fund of the public treasury and paid over to the newspapers
10 or qualified publications publishing such advertising, after proof of
11 publication and claim for payment has been filed.
12 (b) The basic charges for publishing public notice advertising shall
13 be by the line and shall be computed based on a square of two hundred
14 and fifty (250) ems at the following rates:
15 (1) Before January 1, 1996, three dollars and thirty cents (\$3.30)

HB 1230—LS 7076/DI 87+



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per square for the first insertion in newspapers or qualified publications plus one dollar and sixty-five cents (\$1.65) per square for each additional insertion in newspapers or qualified publications.

(2) After December 31, 1995, and before December 31, 2005, a newspaper or qualified publication may, effective January 1 of any year, increase the basic charges by five percent (5%) more than the basic charges that were in effect during the previous year. However, the basic charges for the first insertion of a public notice in a newspaper or qualified publication may not exceed the lowest classified advertising rate charged to advertisers by the newspaper or qualified publication for comparable use of the same amount of space for other purposes.

(3) After December 31, 2009, a newspaper or qualified publication may, effective January 1 of any year, increase the basic charges that were in effect during the previous year by the lesser of the following:

(A) An amount equal to the average of the following:

(i) The annual percentage change in the Consumer Price Index for all Urban Consumers (or any successor index), as published by the United States Bureau of Labor Statistics, for the twelve (12) month period ending June 30 of the preceding year.

(ii) The annual percentage change in the Consumer Price Index for all Urban Consumers (or any successor index), as published by the United States Bureau of Labor Statistics, for the twelve (12) month period ending June 30 of the year preceding the year described in item (i).

(B) The maximum annual percentage increase in the spending of political subdivisions for the year under any spending cap limit enacted into law. However, this clause does not apply if such a cap or limit has not been enacted.

However, the basic charges for the first insertion of a public notice in a newspaper or qualified publication may not exceed the lowest classified advertising rate charged to advertisers by the newspaper or qualified publication for comparable use of the same amount of space for other purposes.

An additional charge of fifty percent (50%) shall be allowed for the publication of all public notice advertising containing rule or tabular work.

(c) All public notice advertisements shall be set in solid type ~~not larger than the type used in the regular reading matter of the newspaper~~

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1 ~~or qualified publication; that is at least 7 point type~~, without any leads
 2 or other devices for increasing space. All public notice advertisements
 3 shall be headed by not more than two (2) lines, neither of which shall
 4 total more than four (4) solid lines of the type in which the body of the
 5 advertisement is set. Public notice advertisements may be submitted by
 6 an appointed or elected official or a governmental agency to a
 7 newspaper or qualified publication in electronic form, if the newspaper
 8 or qualified publication is equipped to accept information in
 9 compatible electronic form.

10 (d) Each newspaper or qualified publication publishing public
 11 notice advertising shall submit proof of publication and claim for
 12 payment in duplicate on each public notice advertisement published.
 13 For each additional proof of publication required by a public official,
 14 a charge of one dollar (\$1) per copy shall be allowed each newspaper
 15 or qualified publication furnishing proof of publication.

16 (e) The circulation of a newspaper or qualified publication is
 17 determined as follows:

18 (1) For a newspaper, by the circulation stated on line 10.C. (Total
 19 Paid and/or Requested Circulation of Single Issue Published
 20 Nearest to Filing Date) of the Statement of Ownership,
 21 Management and Circulation required by 39 U.S.C. 3685 that was
 22 filed during the previous year.

23 (2) For a qualified publication, by a verified affidavit filed with
 24 each governmental agency that has public notices the qualified
 25 publication wants to publish. The affidavit must:

26 (A) be filed with the governmental agency before January 1 of
 27 each year; and

28 (B) attest to the circulation of the qualified publication for the
 29 issue published nearest to October 1 of the previous year.

30 SECTION 2. IC 5-3-1-1.5 IS ADDED TO THE INDIANA CODE
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2009]: **Sec. 1.5. (a) This section applies after June 30, 2009, to a
 33 notice that must be published in accordance with this chapter.**

34 **(b) A notice that is published in the newspaper must also be
 35 posted on the newspaper's web site. The notice must appear on the
 36 web site on the same day the notice appears in the newspaper.**

37 **(c) The state board of accounts shall develop a standard form
 38 for notices posted on a newspaper's Internet web site.**

39 SECTION 3. IC 5-3-1-2 IS AMENDED TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) This section applies only
 41 when notice of an event is required to be given by publication in
 42 accordance with ~~IC 5-3-1~~ **this chapter.**

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(b) If the event is a public hearing or meeting concerning any matter not specifically mentioned in subsection (c), (d), (e), (f), (g), or (h) notice shall be published one (1) time, at least ten (10) days before the date of the hearing or meeting.

(c) If the event is an election, notice shall be published one (1) time, at least ten (10) days before the date of the election.

(d) If the event is a sale of bonds, notes, or warrants, notice shall be published two (2) times, at least one (1) week apart, with:

(1) the first publication made at least fifteen (15) days before the date of the sale; and

(2) the second publication made at least three (3) days before the date of the sale.

(e) If the event is the receiving of bids, notice shall be published two (2) times, at least one (1) week apart, with the second publication made at least seven (7) days before the date the bids will be received.

(f) If the event is the establishment of a cumulative or sinking fund, notice of the proposal and of the public hearing that is required to be held by the political subdivision shall be published two (2) times, at least one (1) week apart, with the second publication made at least three (3) days before the date of the hearing.

(g) If the event is the submission of a proposal adopted by a political subdivision for a cumulative or sinking fund for the approval of the department of local government finance, the notice of the submission shall be published one (1) time. The political subdivision shall publish the notice when directed to do so by the department of local government finance.

(h) If the event is the required publication of an ordinance, notice of the passage of the ordinance shall be published one (1) time within thirty (30) days after the passage of the ordinance.

(i) If the event is one about which notice is required to be published after the event, notice shall be published one (1) time within thirty (30) days after the date of the event.

(j) If the event is anything else, notice shall be published two (2) times, at least one (1) week apart, with the second publication made at least three (3) days before the event.

(k) ~~In case~~ **If** any officer charged with the duty of publishing any notice required by law is unable to procure advertisement:

(1) at the price fixed by law; ~~or~~

(2) ~~because~~ the newspaper refuses to publish the advertisement;
or

(3) ~~because the newspaper refuses to post the advertisement on the newspaper's Internet web site (if required under~~

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section 1.5 of this chapter);

it is sufficient for the officer to post printed notices in three (3) prominent places in the political subdivision, instead of ~~advertisement publication of the notice~~ in newspapers **and on an Internet web site (if required under section 1.5 of this chapter).**

(l) If a notice of budget estimates for a political subdivision is published as required in IC 6-1.1-17-3, and the published notice contains an error due to the fault of a newspaper, the notice as presented for publication is a valid notice under this chapter.

(m) Notwithstanding subsection (j), if a notice of budget estimates for a political subdivision is published as required in IC 6-1.1-17-3, and if the notice is not published at least ten (10) days before the date fixed for the public hearing on the budget estimate due to the fault of a newspaper, the notice is a valid notice under this chapter if it is published one (1) time at least three (3) days before the hearing.

SECTION 4. IC 5-3-1-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. (a) This section applies to each political subdivision that has:**

(1) an annual budget of at least three hundred thousand dollars (\$300,000); and

(2) the power to levy taxes.

(b) This section does not apply to a political subdivision that is required to publish an annual report under any other statute.

(c) As used in this section "political subdivision" has the meaning set forth in IC 36-1-2-13.

(d) Not later than sixty (60) days after the expiration of each calendar year, a political subdivision shall publish an annual report of the receipts and expenditures of the political subdivision during the preceding calendar year.

(e) The annual reports required by this section shall be published only one (1) time per year.

SECTION 5. IC 5-3-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a) Whenever officers of a political subdivision are required to publish a notice affecting the political subdivision, they shall publish the notice in two (2) newspapers published in the political subdivision.**

(b) This subsection applies to notices published by county officers. If there is only one (1) newspaper published in the county, then publication in that newspaper alone is sufficient.

(c) This subsection applies to notices published by city, town, or school corporation officers. If there is only one (1) newspaper

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published in the municipality or school corporation, then publication in that newspaper alone is sufficient. If no newspaper is published in the municipality or school corporation, then publication shall be made in a newspaper published in the county in which the municipality or school corporation is located and that circulates within the municipality or school corporation. ~~The notice shall be posted:~~

~~(1) at or near the city or town hall or school administration building; or~~

~~(2) at the:~~

~~(A) public building where the governing body of the respective city, town, or school corporation meets; or~~

~~(B) post office in the municipality or school corporation (or at the bank if there is no post office);~~

~~if the municipality does not have a city or town hall, or the school corporation does not have an administration building.~~

(d) This subsection applies to notices published by officers of political subdivisions not covered by subsection (a) or (b). ~~including township officers.~~ If there is only one (1) newspaper published in the political subdivision, then the notice shall be published in that newspaper. ~~and if another newspaper is published in the county and circulates within the political subdivision in the other newspaper.~~ If no newspaper is published in the political subdivision, then publication shall be made in a newspaper published in the county and that circulates within the political subdivision.

(e) This subsection applies to a political subdivision, including a city, town, or school corporation. Notwithstanding any other law, if a political subdivision has territory in more than one (1) county, public notices that are required by law or ordered to be published must be given as follows:

(1) By publication in two (2) newspapers published within the boundaries of the political subdivision.

(2) If only one (1) newspaper is published within the boundaries of the political subdivision, by publication in that newspaper and in some other newspaper:

(A) published in any county in which the political subdivision extends; and

(B) that has a general circulation in the political subdivision.

(3) If no newspaper is published within the boundaries of the political subdivision, by publication in two (2) newspapers that:

(A) are published in any counties into which the political subdivision extends; and

(B) have a general circulation in the political subdivision.

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(4) If only one (1) newspaper is published in any of the counties into which the political subdivision extends, by publication in that newspaper if it circulates within the political subdivision.

(f) A political subdivision may, in its discretion, publish public notices in a qualified publication or additional newspapers to provide supplementary notification to the public. The cost of publishing supplementary notification is a proper expenditure of the political subdivision.

SECTION 6. IC 6-1.1-15-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) If a review or appeal authorized under this chapter results in a reduction of the amount of an assessment or if the department of local government finance on its own motion reduces an assessment, the taxpayer is entitled to a credit in the amount of any overpayment of tax on the next successive tax installment, if any, due in that year. After the credit is given, the county auditor shall:

- (1) determine if a further amount is due the taxpayer; and
- (2) if a further amount is due the taxpayer, notwithstanding IC 5-11-10-1 and IC 36-2-6-2, without a claim or an appropriation being required, pay the amount due the taxpayer.

The county auditor shall charge the amount refunded to the taxpayer against the accounts of the various taxing units to which the overpayment has been paid. The county auditor shall notify the county executive of the payment of the amount due. ~~and publish the allowance in the manner provided in IC 36-2-6-3.~~

(b) The notice under subsection (a)(2) is treated as a claim by the taxpayer for the amount due referred to in that subsection.

SECTION 7. IC 32-29-7-3, AS AMENDED BY P.L.100-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

- (1) the period is:
 - (A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and
 - (B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and
- (2) if the court finds that the mortgaged real estate is residential real estate and has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or

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decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least ~~one (1)~~ **two (2) newspapers** published and circulated in each county where the real estate is situated. **If there is only one (1) newspaper published in a county, publication in that newspaper alone is sufficient. Payment for publication is due not sooner than the day after the advertised date of the sale.** The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

(1) a cost of the proceeding;

(2) to be collected as other costs of the proceeding are collected;

and

(3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale at the door of the courthouse of each county in which the real estate is

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1 located.

2 (f) If the sheriff is unable to procure the publication of a notice
3 within the county, the sheriff may dispense with publication. The
4 sheriff shall state that the sheriff was not able to procure the
5 publication and explain the reason why publication was not possible.

6 (g) Notices under subsections (d) and (e) must contain a statement,
7 for informational purposes only, of the location of each property by
8 street address, if any, or other common description of the property other
9 than legal description. A misstatement in the informational statement
10 under this subsection does not invalidate an otherwise valid sale.

11 (h) The sheriff may charge an administrative fee of not more than
12 two hundred dollars (\$200) with respect to a proceeding referred to in
13 subsection (b) for actual costs directly attributable to the administration
14 of the sale under subsection (c). The fee is:

15 (1) payable by the person seeking to enforce the judgment and
16 decree; and

17 (2) due at the time of filing of the praecipe;
18 under subsection (b).

19 SECTION 8. IC 36-2-6-3 IS AMENDED TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) This section does not apply
21 to claims for salaries fixed in a definite amount by ordinance or statute,
22 per diem of jurors, and salaries of officers of a court.

23 (b) The county auditor shall ~~publish all claims that have been filed~~
24 ~~for the consideration of the county executive and shall~~ publish all
25 allowances made by courts of the county. ~~Claims filed for the~~
26 ~~consideration of the executive shall be published at least three (3) days~~
27 ~~before each session of the executive; and~~ Court allowances shall be
28 published at least three (3) days before the issuance of warrants in
29 payment of those allowances. ~~In publication of itemized statements~~
30 ~~filed by assistant highway supervisors for consideration of the~~
31 ~~executive; the auditor shall publish the name of each party and the total~~
32 ~~amount due each party named in the itemized statements. Notice of~~
33 ~~claims filed for consideration of the county executive must state their~~
34 ~~amounts and to whom they are made. Claims and Allowances subject~~
35 ~~to this section shall be published as prescribed by IC 5-3-1 except that~~
36 ~~only one (1) publication in two (2) newspapers is required.~~

37 (c) ~~A member of the county executive who considers or allows a~~
38 ~~claim; or~~ A county auditor who issues warrants in payment of
39 allowances made by ~~the county executive or~~ a court of the county,
40 before compliance with subsection (b), commits a Class C infraction.

41 (d) A county auditor shall publish one (1) time in accordance with
42 IC 5-3-1 a notice of all allowances made by a circuit or superior court.

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1 The notice must be published within sixty (60) days after the
 2 allowances are made and must state their amount, to whom they are
 3 made, and for what purpose they are made.

4 SECTION 9. IC 36-2-6-4.5, AS AMENDED BY P.L.146-2008,
 5 SECTION 688, IS AMENDED TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2009]: Sec. 4.5. (a) A county executive may
 7 adopt an ordinance allowing money to be disbursed for lawful county
 8 purposes under this section.

9 (b) Notwithstanding IC 5-11-10, with the prior written approval of
 10 the board having jurisdiction over the allowance of claims, the county
 11 auditor may make claim payments in advance of board allowance for
 12 the following kinds of expenses if the county executive has adopted an
 13 ordinance under subsection (a):

- 14 (1) Property or services purchased or leased from the United
- 15 States government, its agencies, or its political subdivisions.
- 16 (2) License or permit fees.
- 17 (3) Insurance premiums.
- 18 (4) Utility payments or utility connection charges.
- 19 (5) General grant programs where advance funding is not
- 20 prohibited and the contracting party posts sufficient security to
- 21 cover the amount advanced.
- 22 (6) Grants of state funds authorized by statute.
- 23 (7) Maintenance or service agreements.
- 24 (8) Leases or rental agreements.
- 25 (9) Bond or coupon payments.
- 26 (10) Payroll.
- 27 (11) State or federal taxes.
- 28 (12) Expenses that must be paid because of emergency
- 29 circumstances.
- 30 (13) Expenses described in an ordinance.

31 (c) Each payment of expenses under this section must be supported
 32 by a fully itemized invoice or bill and certification by the county
 33 auditor.

34 (d) The county executive or the county board having jurisdiction
 35 over the allowance of the claim shall review and allow the claim at its
 36 next regular or special meeting following the preapproved payment of
 37 the expense.

38 ~~(e) A payment of expenses under this section must be published in~~
 39 ~~the manner provided under section 3 of this chapter.~~

40 SECTION 10. IC 36-4-7-2 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) As used in this
 42 section, "compensation" means the total of all money paid to an elected

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1 city officer for performing duties as a city officer, regardless of the
2 source of funds from which the money is paid.

3 (b) The city legislative body shall, by ordinance, fix the annual
4 compensation of all elected city officers. ~~The ordinance must be~~
5 ~~published under IC 5-3-1, with the first publication at least thirty (30)~~
6 ~~days before final passage by the legislative body.~~

7 (c) The compensation of an elected city officer may not be changed
8 in the year for which it is fixed nor may it be reduced below the amount
9 fixed for the previous year.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1230, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 34, delete "If a newspaper has an Internet web site that meets the".

Page 3, line 35, delete "requirements of subsection (c), a" and insert "A".

Page 3, delete lines 39 through 41.

Page 3, line 42, delete "(d)" and insert "(c)".

Page 4, delete lines 2 through 7.

Page 5, delete lines 27 through 42.

Delete pages 6 through 7.

Page 8, delete lines 1 through 4.

Page 8, line 19, delete "In the annual financial report, the".

Page 8, delete lines 20 through 35.

Page 12, delete lines 24 through 42.

Page 13, delete lines 1 through 19.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1230 as introduced.)

SMITH V, Chair

Committee Vote: yeas 9, nays 0.

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